



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 11973164

Date: DEC. 31, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an actor, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition,¹ concluding that although the Petitioner satisfied the initial evidence requirements for this classification, he did not demonstrate his sustained national or international acclaim and establish that he is among the small percentage at the very top of his field of endeavor. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, the Petitioner has not met this burden. Accordingly, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

¹ Initially, the Director issued a notice acknowledging the withdrawal of the petition. The Petitioner filed a motion to reconsider, asserting that he had not requested the withdrawal. The Director granted the motion and issued a decision denying the petition on its merits on March 5, 2019. The Petitioner appealed that decision to our office, and we withdrew the Director's decision and remanded the matter to the Director for entry of a new decision. The Director's new decision, dated April 8, 2020, is now before us on appeal.

- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is an actor who works in the Chinese film, television and theater industry.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the ten alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed to meet four of these criteria, and the Director concluded that he submitted evidence to satisfy at least three of them.² Specifically, the Director determined that the Petitioner met the criteria relating to lesser nationally recognized awards, published materials in major media, and participation as a judge of the work of others in his field. *See* 8 C.F.R. § 204.5(h)(3)(i), (iii) and (iv). We will not disturb the Director's determinations with respect to these criteria.

After determining that the Petitioner satisfied three of the regulatory criteria, the Director proceeded to a final merits determination. Based on an evaluation of the totality of the evidence, the Director

² The Director's decision contains a typographical error and states that the Petitioner “has met the plain language of criterion i, ii, ii, and iv.” However, the explanation that followed indicated that the Petitioner met the awards, published materials and judging criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii) and (iv). Specifically, before proceeding to the final merits determination, the Director referenced the Petitioner's participation on a judging committee for the China Film Performing Arts Institute, his receipt of a [REDACTED] Award for acting in 2004, and media coverage of the Petitioner and his work in *People's Daily*. In the final merits determination below, we will consider evidence submitted in support of all claimed criteria, including the criterion related to memberships in associations at 8 C.F.R. § 204.5(h)(3)(ii).

concluded that the record did not show the Petitioner's sustained national or international acclaim and demonstrate that he is at the very top of his field of endeavor.

On appeal, the Petitioner asserts that the Director erred in conducting a multi-part analysis and final merits determination, citing to both U.S. Supreme Court caselaw on statutory interpretation and *Kazarian*, 596 F.3d 1115 (9th Cir. 2010). Specifically, the Petitioner cites to *Escondido Mut. Water Co. v. La Jolla Band of Mission Indians*, 466 U.S. 765, 72 (1984), in which the Court determined that "[absent] a clearly expressed legislative intention to the contrary, [statutory] language must ordinarily be regarded as conclusive." The Petitioner argues this same plain language rule applies to regulatory language and that the regulation at 8 C.F.R. § 204.5(h)(3) requires only that he provide evidence of a qualifying major, internationally recognized award or evidence that satisfies at least three of the ten alternate criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). He further contends that "[s]ince Service Center acknowledged [he] has met at least 3 of the 10 criteria, according to the US Supreme Court's plain language rule, this petition should be approved."

The Petitioner further claims that the Ninth Circuit Court's decision in *Kazarian* supports his position. Specifically, he maintains that, according to *Kazarian*, if an applicant has satisfied at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), "he should win" and if "he has met 2 or less, he should lose." In addition, he states that "[n]owhere in *Kazarian v. USCIS* does 9th Circuit rule that meeting 3 types of evidence does not qualify for extraordinary abilities." The Petitioner is mistaken in his reading of *Kazarian*, which does in fact set forth the multi-part analysis referenced above, in which eligibility can only be established if a petitioner first meets the initial evidence requirements of a qualifying major internationally recognized award or at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The *Kazarian* decision does not state that meeting three of these criteria establishes eligibility for this classification. Rather, *Kazarian* discusses a two-part review where the evidence is first counted and then, if fulfilling the initial evidence requirements, considered in the context of a final merits determination to determine whether a given petitioner is one of that small percentage who have risen to the very top of the field of endeavor consistent with the statute and regulations for this restrictive classification.

Therefore, for the reasons discussed, the Petitioner has not established that the Director erred in proceeding to a final merits determination.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20.³ In this matter, the Director determined that the Petitioner did not demonstrate that he meets

³ See also USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140

this very high standard. On appeal, the Petitioner has not addressed the Director's decision beyond objecting to its inclusion of a multi-part analysis and final merits determination. Upon our *de novo* review of the record, and for the reasons discussed below, we have reached the same conclusion as the Director.

The record reflects that the Petitioner has maintained a professional acting career in China's theater, television, and film industries since the 1980s. A published article about the Petitioner mentions that he was admitted to [redacted] folk arts troupe as an arts student in 1974, and later studied at the [redacted] Drama Academy's Department of Performance beginning in 1980. We note that the record does not contain the Petitioner's complete filmography, but only highlights a few of his more notable projects over the course of his career.

As mentioned above, the Petitioner has won awards for acting, been featured in at least one major media publication, and served as a judge for an award given in the Chinese film industry. He also submitted evidence of his membership in a national association for theater actors. The record, however, does not demonstrate that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

The Petitioner has established that he has received five acting awards from national performing arts entities in China. Based on the evidence submitted, the most significant of these awards was a [redacted] Award for [redacted] Actor he received in 2004 for his role in the film [redacted], a role which also resulted in his nomination for a [redacted] Award. The Petitioner described the [redacted] Award as the "highest government honor in film industry" and as one of China's three main film awards along with the [redacted] Awards and [redacted] Awards. Although the Petitioner did not submit documentation describing these awards or their relative significance, we note that the record reflects that he received major media recognition in *People's Daily* as well as media coverage in other Chinese publications based on his receipt of the [redacted] Award and [redacted] nomination. The evidence establishes that the award is nationally recognized and that his receipt of the award garnered the Petitioner some national acclaim in China. However, he received this award 13 years prior to filing the petition and must demonstrate that he sustained this level of acclaim and remains at the very top of his field.

The record also demonstrates that the Petitioner received a China [redacted] Actor Award from the China Television Artists Association in 1993 for his role in the series [redacted]. The Petitioner described the [redacted] as "one of the most prestigious television awards alongside the [redacted] Awards and [redacted] Awards," and provided background information regarding the award from the user-edited online encyclopedia sites *Wikipedia* and *Baidu*,⁴ and from *China Documentary Network*, as well as a list of all previous winners from *Sohu*. While the evidence confirms the Petitioner's receipt of the award in 1993 and is sufficient to establish that it is a nationally

Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 4 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

⁴ We note that *Wikipedia* and *Baidu* are online, open source, user-edited encyclopedias. *Wikipedia* explicitly states it cannot guarantee the validity of its content. See *General Disclaimer, Wikipedia* (last visited Dec. 22, 2020), https://en.wikipedia.org/wiki/Wikipedia:General_disclaimer; see also *Badasa v. Mukasey*, 540 F.3d 909 (8th Cir. 2008).

recognized award in the Chinese television industry, the record does not demonstrate that he received significant media coverage as a result of winning the award. Further, the record lacks evidence establishing the level of national acclaim associated with this achievement, or to what degree such acclaim was sustained, given that the record contains little or no other evidence relating to the Petitioner's career in the 1990s.

For his work in theater, the Petitioner received a China [] Award from the China Drama Art Research Society in 2014. The award is described in the record as "the only professional award for Chinese drama art," and the record includes evidence that a list of the 2014 winners was published on the websites of the [] Theatre of China and the [] Theatre Association. However, the record does not include evidence that the award ceremony or the winners received, for example, media attention from major media or entertainment industry publications and does not otherwise establish to what extent this award, the only one he received in the same decade the petition was filed, contributed to the Petitioner's sustained national acclaim.

Finally, the Petitioner provided evidence that he has twice received the [] Award" (also known as the [] Award") from the China Film Performing Art Institute, in 1989 and in 2005. According to the selection rules published on the website of the China Film Performing Art Institute, the award is "a professional award voted by and issued to its [] in the institute." This bi-annual award is also described in the record as "the only performance art award in China solely voted by []" The Petitioner submitted evidence that the 2005 award ceremony was covered by *Sina Entertainment* (<http://ent.sina.com.cn>) but we cannot determine based on one media report the extent to which these awards, granted to the Petitioner 28 and 12 years prior to the filing of the petition, resulted in or contributed to his sustained national or international acclaim.

Overall, the evidence related to the Petitioner's awards establishes that he has received industry recognition based on his performances on stage, in television and in film, as well as some major media recognition, specifically as a result of his [] Award received in 2004. Although his awards span a period of 25 years, he received all but one of his acting awards 12 or more years prior to the filing of the petition in 2017, while the significance of his one more recent award has not been established. For these reasons, the evidence related to his awards does not demonstrate his sustained national acclaim in his field and indicate that he is currently among that small percentage who have risen to the very top of the field.

The Petitioner has also submitted evidence related to his membership in the China Theatre Association. The Petitioner initially submitted a membership certificate issued to him by the association in October 2017, just prior to the filing of the petition, but later submitted a letter from a deputy director with the association who stated that he was admitted as a member in 2003. The record does not include an explanation for this apparent discrepancy in the Petitioner's date of admission to the association.

With respect to the membership requirements, the Petitioner provided the China Theatre Association's 2015 Constitution, its membership admission rules as of 2018, and the referenced letter from its deputy director. The association's constitution provides that membership is available to theater workers with "definite achievements in the field of drama art." The deputy director's letter states that "only those who have achieved the highest achievement in the industry and have national popularity can join the

China Theatre Association, otherwise they can only join the provincial or municipal theatre association.” He further states that successful applicants for membership must have “national influence, receive performance award and [be] regarded as representative figures in their field of expertise.” Finally, the association’s membership admission rules provide that actors must have “senior titles” or be “individual winners of national drama awards or first prize winners in provincial . . . level awards.”

While all three of these descriptions of the association’s membership requirements provide that prospective applicants are evaluated based on their achievements in theater, they do not describe these requirements consistently. Although the Petitioner claims that membership requires a national theater award as an achievement, there is no evidence that he himself had received such an award prior to 2003, the admission date provided by the organization’s deputy director. Nevertheless, even if we determined that the China Theater Association requires its members to have outstanding achievements, we cannot conclude based on the evidence presented that membership in this association is indicative of an individual’s sustained national acclaim in the field, garners an individual such acclaim, or that membership is reserved for those actors in the small percentage at the very top of the field.

Regarding published material about him, the Director determined that the Petitioner submitted a qualifying article published in *People’s Daily* in 2004. This interview with the Petitioner, published shortly after his receipt of the [redacted] Award and a [redacted] Award nomination for his role in [redacted] was supported by sufficient independent evidence to establish that the publication qualifies as major media. However, most of the ten submitted articles about the Petitioner were not accompanied by such evidence, as the Petitioner relied on user-edited encyclopedias like *Wikipedia* and *Baidu*, and the publications’ own websites, without providing objective evidence that such publications enjoy high circulation or distribution in comparison in relation to others, or that they are professional or major trade media.

Even if we determined that the Petitioner provided sufficient evidence to establish that all or most of the submitted articles had appeared in major media, the evidence does not establish that ten articles published over the course of a decades long career in the film and television industry is consistent with the sustained national or international acclaim necessary for this highly restrictive classification. See section 203(b)(1)(A) of the Act. As noted, a few of the submitted articles focus on the Petitioner’s receipt of the 2004 [redacted] Award. Four of the articles relate to the Petitioner’s role in the 2012 film [redacted] and the Petitioner was interviewed by *China TV Newspaper* in connection with his role in the television series [redacted] in 2009. The evidence also includes a 2002 article from *Beijing Youth Daily* in which he was interviewed about his film and television career and his return to live theatre, and a 2013 article from *Netease Entertainment* that discusses his role in the play [redacted]. The only recent article, published on the website mp.weixin.qq.com, is a 2017 article titled [redacted]. This article, which appears to be a blog post attributed only to [redacted], provides a career retrospective, highlighting some of the Petitioner’s film roles from the mid-1980s, his role in [redacted], and his role in a 2016 film [redacted] that is not mentioned elsewhere in the record.

The submitted media coverage shows that the Petitioner has received media recognition for certain roles and projects during his career but does not demonstrate that he has enjoyed sustained national acclaim. The Petitioner works in a high-profile industry in which most, if not all, projects receive

media coverage to some extent. Without evidence that sets him apart from others in this field, he has not established how the submission of ten published articles about him demonstrates that he is among “that small percentage who [has] risen to the very top of the field of endeavor.” *See* 8 C.F.R. § 204.5(h)(2). The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).

Finally, as it pertains to the Petitioner’s service as a judge of others, an evaluation of the significance of his experience is appropriate to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. *See Kazarian*, 596 F. 3d at 1121-22. The Petitioner provided evidence showing that, in 2015, he served on the judging committee responsible for selecting the 15th Institute Award winners for the China Film Performing Arts Institute. However, the Petitioner did not establish that this single judging instance places him among the small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). He did not show, for example, how his judging experience compares to others at the top of the field, that the committee included only nationally acclaimed artists, or that the judging committee members received significant recognition in the field as a result of their participation.

The record as a whole, including the evidence discussed above, does not establish the Petitioner’s eligibility for the benefit sought. The record reflects that the Petitioner has enjoyed a long career as a stage, film and television actor, is regarded as a talented performer, and has received some industry and press recognition with respect to a few of his projects over the years. However, the Petitioner seeks a highly restrictive visa classification, intended for individuals who are at the top of their respective fields. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of “extraordinary ability.” *Matter of Price*, 20 I&N Dec. at 954. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.